IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.610 OF 1994

Narayan Vishnu Jaygude
Residing at Ozarde, Taluka Wai
District Satara .. Appellant.

Vs.

Savitrabai W/o Kisan Salunkhe
Residing at Ozarde, Taluka Wai
District Satara .. Respondent.

Mr.H.D.Gole for the appellant.
Mr.P.N.Karlekar for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 16TH JANUARY, 2007

ORAL JUDGMENT:

. This appeal by the defendant is directed against the concurrent judgments rendered by the courts below by which a suit instituted by the respondent-plaintiff has been decreed. The suit was for possession of an agricultural land, only to the extent of 1 guntha out of Gat No.1565, owned by the plaintiff (for short "suit land"). The case set up by the respondent-plaintiff was that in 1978 the appellant-defendant encroached upon the suit land. On 24.6.1980 the land was measured by the DILR when the encroachment was revealed, and hence the plaintiff filed the suit in 1981.

2. Both the courts below after having considered the evidence on record and in particular the report of DILR and the map drawn by him have answered both the issues in favour of the respondents. The courts below held that the plaintiff proved the encroachment made by the defendant upon the suit property as alleged in paragraph 2 of the plaint and that the defendant has failed to prove that he has become owner of the encroached portion by way of an adverse possession.

3. Mr.Gole, learned counsel for the appellant submitted that the DILR did not follow the procedure contemplated in law while carrying out measurement of the agriculture lands. He submitted that the DILR did not show the marks of the appellant's vahiwat either in the report or in the map submitted by him. He further submitted that the case of adverse possession was not considered by the courts below in proper perspective. Even the issue regarding adverse possession was not framed by the appeal court. On the other hand Mr.Karlekar, learned counsel for the respondent submitted that both the courts below after having considered the report of the Surveyor have concurrently held that the defendant has encroached upon the property to the extent of 1 guntha as claimed in paragraph 2 of the plaint. He submitted it is not correct to say that the appeal court did not consider

the case of the appellant that he acquired ownership by adverse possession. He then submitted that the appellant cannot claim ownership by adverse possession since the alleged encroachment was made in 1978, whereas the suit for possession was filed by the respondent in 1981.

4. The stand of the appellant, insofar as survey by the DILR is concerned, is self contradictory. In the court below, he took a stand that he had no notice of survey and he was not present when the measurement was carried out. However, it is clearly reflected, as observed by the courts below, that the appellant was present when the lands were measured. Mr.Gole, learned counsel for the appellant could not and did not point out any error in the procedure that was followed by the DILR while carrying out the measurement and/or any defect in the report/map submitted by him. I find absolutely no reason to interfere with the findings of fact recorded by the courts below on the basis of the survey holding that the encroachment to the extent of 1 guntha by the appellant stands proved. The first contention of Mr.Gole, therefore, deserves to be rejected. Insofar as the contention of Mr.Gole regarding adverse possession is concerned, it deserves to be rejected outright in view of the fact that the alleged

encroachment was made, according to the respondent, for the first time in 1978 whereas suit was filed in 1981. Though the appellant claim that he was in possession since more than 50-60 years prior to filing of the suit, he has not produced a single document on record in support thereof nor did he examine any witness in support of his contention. Moreover, both the courts below after considering the evidence on record concurrently held that possession of the appellant was not hostile as is required for claiming ownership by adverse possession. Though no specific point of adverse possession for determination, was framed, it is clear that it was considered by the appellate court which recorded its finding against the appellant. I find absolutely no merit and substance in the appeal hence the appeal is dismissed with costs.

(D.B.Bhosale, J.)